

Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, D.C. 20554

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APR 17 1997

Federal Communications Commission
Office of Secretary

In the Matter of

Revision of Part 22 and Part 90 of the
Commission's Rules to Facilitate Future
Development of Paging Systems

WT Docket No. 96-18

Implementation of Section 309(j)
of the Communications Act --
Competitive Bidding

PP Docket No. 93-253

TO: The Commission

COMMENTS

The Washington, D.C. telecommunications law firm of Blooston, Mordkofsky, Jackson & Dickens, on behalf of its paging carrier clients listed in Attachment A hereto (hereinafter the Commenters), hereby submits comments on certain matters which were the subject of the Further Notice of Proposed Rulemaking issued in the above captioned proceeding on February 24, 1997.¹ In particular, the Commenters request that the Commission adopt buildout requirements for nationwide carriers which are identical to the requirements which will be imposed on non-nationwide paging providers pursuant to rules adopted in this Docket, unless the Commission eliminates its market area licensing procedures on reconsideration.

The Commenters are several paging carriers of various sizes, licensed by the Commission to operate on frequencies allocated under FCC Rule Parts 22 and 90. While some of these carriers operate substantial regional systems in which they have invested millions of dollars, none of these carriers is a nationwide paging licensee. Therefore, in order to protect the integrity of their existing systems and preserve their ability to expand and modify their system coverage, these carriers will have to participate in the paging auctions adopted in this proceeding, unless the Commission reverses its decision on reconsideration or the decision is reversed by the U.S. Court of Appeals. Pursuant to the auction rules, these entities will be subjected to a requirement to extend their coverage in any market area they win at auction, to

¹See Second Report and Order and Further Notice of Proposed Rulemaking, 62 Fed. Reg. 11616 (March 12, 1997) (hereinafter "FNPRM").

include one third of the population within three years and two thirds of the population within five years. In the alternative, these carriers must demonstrate that they provide "substantial service" within five years of license grant.

The FNPRM requests comments on whether the Commission should impose coverage requirements for nationwide paging licensees and, if so, what the coverage requirements should be. The Commission also seeks comments on whether it should re-auction all or part of a nationwide license if the licensee fails to meet such buildout requirements. The Commenters are on record as opposing the newly adopted paging auctions for the non-nationwide frequencies. However, should the auctions proceed nonetheless, it is imperative that nationwide carriers be required to meet the same buildout requirement as non-nationwide carriers.

Nationwide carriers should be required to serve one third of the Country's population within three years, and two thirds of the Country's population within five years. These carriers already have a distinct competitive advantage because they have been unfairly exempted from the delays and expense associated with the paging auctions. This disparity will only be exacerbated if they are likewise exempt from the buildout requirement. It is arbitrary and capricious for the Commission to treat similarly situated applicants in a disparate manner. See Green Country Mobilephone, Inc. v. FCC, 765 F.2d 235 (DC Cir. 1985). Such discrimination in favor of nationwide carriers also violates the requirements of regulatory parity set forth in the Omnibus Budget Reconciliation Act of 1993.

Nationwide carriers have in most cases been licensed for several years, and therefore are well along in their buildout. While the nation includes rural areas, it will be similarly difficult for market area licensees to build out as required by the rules in market areas that may be predominantly rural in nature. If there is no buildout requirement applicable to nationwide carriers, they will be able to "skim the cream," by serving only areas with high population density. This privilege will not only increase their unfair advantage over other paging providers, but will result in a lack of service in rural areas on the 26 nationwide paging


channels, in contravention of the requirements of Section 309 (j) of the Communications Act of 1934, as amended.

In imposing a buildout requirement on nationwide carriers, the Commission should not allow such carriers to meet this requirement by showing "substantial service." The Commenters have requested in their April 11, 1997 Petition for Reconsideration that the substantial service option be eliminated for all carriers, including non-nationwide providers. This option encourages speculators, and discourages the implementation of service to rural areas. Considerations of fairness, regulatory parity and rural service mandate that the substantial service option likewise be unavailable to nationwide carriers. These same considerations dictate that nationwide licenses be cancelled and re-auctioned if the licensee fails to meet the construction requirements.

Conclusion

In light of the foregoing, it is respectfully requested that the Commission modify its rules as proposed above.

Respectfully submitted,

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ATTACHMENT A

AzCOM Paging, Inc.

Cascade Utilities, Inc.

Cleveland Mobile Radio Sales, Inc.

Com-Nav, Inc. d/b/a Radiotelephone of Maine

Arthur Dale and Angelina Hickman d/b/a Omnicom

Lubbock Radio Paging Service, Inc.

Oregon Telephone Corporation

Penasco Valley Telephone Cooperative, Inc.

Prairie Grove Telephone Company

Professional Answering Service, Inc.

Robert F. Ryder d/b/a Radio Paging Service

Radiofone, Inc.

Telephone & Two-Way, Inc.

Teletouch Licenses, Inc.

Clifford D. Moeller and Barbara J. Moeller d/b/a Valley Answering Service

Ventures in Paging L.C.